

[REDACTED]

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were created to raise funds to be used to aid in the research for cures for cancer, to assist care providers in performing their duties and to aid families in crisis due to cancer. You have subsequently decided that you will only use you funds to assist cancer stricken children and their families with medical bills. Those you will help must be cancer stricken, under 18 years old, and from financially challenged families. Funds will be raised through the use of professional fundraisers and you also expect to work with churches for the conduct of events such as luncheons, barbecues, yard sales, car washes, cookouts and bakeoffs. You intend to begin operations in two local counties and to eventually go nationwide.

You were created by [REDACTED] his brother, and a business associate. Your officers are [REDACTED], his brother, and a business associate. These same individuals are also your directors. Each will be paid [REDACTED] per year for duties as officers and as Public Relations Consultants. These salaries constitute twenty-five to thirty per cent of your gross receipts. You have been unable or unwilling to provide details as to the duties to be performed in return for this compensation. You do not have any contracts with professional fundraisers yet, but anticipate that approximately thirty-four per cent of your gross receipts will be paid to professional fundraisers. You have been unable to provide any details of how these professional fundraisers will operate or of your proposed agreements with them. You have provided only very general broad criteria as to how you will select those individuals to whom you will provide financial aid.

[REDACTED]

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations which are organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that an organization must be both organized and operated exclusively for one or more of the purposes specified in section 501(c)(3) of the Code in order to be exempt as an organization described in such section.

Section 1.501(c)(3)-1(b)(1) of the regulations states, in part, that an organization is not organized exclusively for exempt purposes unless its activities are limited to one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it is engaged primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states, in part, that an organization is not operated exclusively for exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations states, in part, that the words private shareholder or individual refers to: persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(ii) of the regulations states that an organization is not organized or operated for one or more exempt purposes unless it serves a public rather than a private interest. Accordingly, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator, shareholders, or persons controlled, directly or indirectly, by such private interests.

In Better Business Bureau of Washington D.C. v. United States, 326 U.S. 279 (1945), it was held that a single non-exempt purpose, if substantial in nature, would preclude exemption under section 501(c)(3) of the Code regardless of the number or importance of truly exempt purposes.

[REDACTED]

In Bill Wildt's Motorsport Advancement Crusade v. Commissioner, No. 22975-87X, T.C. Memo 1989-93 (March 9, 1989), 56 TCM 1989-93, the court found a substantial non-exempt purpose of promoting the competitive and commercial motorsport industry. It also found that because the creators has a significant involvement in the industry, controlled the organization as its trustees, were the primary salaried employees, and the bulk of the money budgeted for contracted equipment would go to one of these individuals for the use of his equipment, petitioners had not shown that there was no inurement of earnings to the benefit of private individuals. For both of these reasons the court held that petitioners did not qualify for exemption under section 501(c)(3) of the Code.

Because of the nature of the close control over your management and operations by the same persons who created you, including setting their own salaries and jobs, there appears to be use of your net earnings to their private benefit. This constitutes inurement and private benefit within the meaning of sections 501(c)(3) of the Code and 1.501(c)(3)-1(c)(2) of the regulations and would preclude recognition of exemption from federal income tax under section 501(c)(3). This would also tend to indicate that you are not organized and operated to serve a public interest as required under section 1.501(c)(3)-1(d)(ii). This situation is similar to that in Bill Wildt's Motorsport Advancement Crusade, wherein the organization was controlled by its trustees who were its primary salaried employees, and the rationale used to deny recognition of exemption to them would tend to support the above conclusion.

Because you have been unable to adequately describe your charitable activities, it appears that you are not operated exclusively in furtherance of exempt purposes. It appears instead, that you are substantially operated for the benefit of those who created and control you. By serving such private interests you are not operated exclusively for exempt purposes. This would preclude your being recognized as exempt under section 501(c)(3) of the Code under the rationale cited in Better Business Bureau and section 1.501(c)(3)-1(b)(1) of the regulations.

Therefore, it appears you are not operated exclusively for charitable purposes under section 501(c)(3) of the Code. You are engaged in substantial non-exempt activities that also promote private benefit contrary to section 1.501(c)(3)-1(c)(1) and 1(d)(ii) of the regulations. Such private benefits include furthering the financial interests of those operating and controlling you. We conclude, therefore, that you are not entitled to recognition of exemption from federal income tax under section 501(c)(3).

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

cc:

[REDACTED]

[REDACTED]

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

